IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

DISTRICT:

CIVIL APPLICATION NO. 1961 OF 2006

IN

FIRST APPEAL (St.) NO. 8101 OF 2006

Office Notes,Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr.Rajesh B.Parab for the Applicant.

Mr.Rohit Fogla for the Respondent.

CORAM: S.B.DESHMUKH, J.

DATE : 12TH OCTOBER, 2006

P.C.:

Heard learned Counsel for the parties.

2. By this application, the applicant is seeking condonation of delay to the extent of 389 days occurred in filing the present first appeal in this Court.

3. It is stated by the applicant, in paragraph 6 of the civil application, that certified copy of the judgment alone was applied by the advocate,

representing the applicant in the trial court. Such certified copy of the judgment was made available to the learned Counsel appearing for the applicant on 19th September, 2005. The applicant was advised to obtain certified copy of the decree also for filing appeal in this Court. Such certified copy of decree was applied on 8th March, 2006, which was delivered to the applicant on 16th March, 2006. Apart from this, the applicant also alleged in paragraph 6 of the application that he was labouring under the impression that limitation for filing first appeal was 90 days. He was also suffering from back pain and for that he left for his native place. Thus, delay of 289 days, accordingly, is explained by the applicant.

4. Learned Counsel for the respondent has also referred to paragraph 6 of the application. According to him, the advocate representing the applicant, in the trial court, was aware, that limitation for filing of

the appeal in this court is only 30 days and not 90 days. In this fact situation, this delay cannot be said to be unintentional. He, therefore, seeks dismissal of the application filed by the applicant.

5. The application filed by the applicant is under Section 5 of the Limitation Act, 1963. The phrase "sufficient cause" is considered time and again by this Court as well as Apex Court. The Judgment of the Apex Court in the matter of **Collector, Land Acquisition, Anantnag and anr. v/s Mst. Katiji and others,** reported in AIR 1987 SC 1353, can be referred to. Six guide-lines have been laid down by the Apex Court, while considering "sufficient cause" within the meaning of Section 5 of the Limitation Act. These guide-lines are reproduced hereinbelow:

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) "Every day's delay must be explained", does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on

account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice and is expected to do so.

6. The Apex Court, again in the matter of **N. Balakrishnan v/s M. Krishnamurthy,** AIR 1998 SC 3222 has considered the phrase "sufficient cause". Earlier judgment AIR 1987 SC 1353 is being referred to. Apart from that judgment in the matter of N. Balakrishnan (supra), the Apex Court held that some lapse on the part of a party seeking condonation of delay is bound to happen in these days. Everybody is busy with his profession, occupation, etc. and, therefore, such lapse, can be considered in the facts and circumstances of the case. On

account of such lapse, the application can not be turned down by shutting the door of justice to the litigant concerned. The Apex Court, thereafter, in the matter of **Ram Nath Sao alias Ram Nath Sahu and others v/s Gobardhan Sao and others,** AIR 2002 SC 1201, held that "sufficient cause" phrase has to be considered to advance the cause of justice. Considering the ratio laid down by the Apex Court in all these judgments, in my view, in the case in hand, delay is properly explained by the applicant. Delay is also bonafide. It is to be noted that no reply affidavit is filed on behalf of the respondent disputing the fact alleged in paragraph 6 of the civil application.

7. I am satisfied that delay is properly explained and needs to be condoned. In the result, delay of 289 days, occurred in filing the present first appeal in this court is condoned. Civil Application, accordingly, is allowed and disposed of.

Sd/-

(S.B.DESHMUKH, J.)

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List the appeal for admission on 7th December, 2006, if all objections are removed and the appeal is numbered.

Sd/-

(S.B.DESHMUKH, J.)